IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.1061/2006

Hasti Mal Chhajer
Vs.
Additional District & Sessions Judge (Fast Track)
No.4, Jaipur City, Jaipur & Anr.

Date of Judgment :: 29-01-2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri S.D. Khaspuria for the appellant.
Shri Rajesh Moondia for the respondent.
****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

This special appeal is directed against the order of the learned Single Judge dated 11.9.2006 in S.B. Civil Writ Petition no.7080/2006 dismissing the writ petition of the appellant.

The appellant had filed the writ petition challenging the orders of the trial court 27.5.2006 and 5.8.2006. By the former order, the court rejected the application of the appellant, who is defendant in the court below, to examine Forensic Expert and Handwriting Expert. By the latter order, the court

rejected the application of the appellant to take documents on record.

The writ petition had arisen from a suit instituted by respondent no.2, Smt. Satish Sharma, for recovery of Rs.10,75,800/- with interest on the basis of the document, said to be promissory note, in terms of Order 37 of the Code of Civil Procedure. The case of the appellant is that respondent had paid him Rs.2,90,000/- by cheque against sale of a flat out of consideration of Rs.8,00,000/- under agreement dated 31.5.1999. The appellant denied the plaintiff's case of loan.

From perusal of the order dated 27.5.2006, it appears that on 24.3.2006 time was allowed to the appellant to examine Forensic Expert and Handwriting Expert. Another opportunity in this regard was given on 5.4.2006 making it clear that if the witnesses are not examined on 12.4.2006, no further opportunity will be allowed. However on 12.4.2006, no witness was present. At this stage, the suit was transferred to the file of Additional District Judge (Fast Track) No.4, Jaipur City. On receipt of the records, on 6.5.2006 the suit was fixed for 22.5.2006. Yet another opportunity was given on 22.5.2006 for examination of witness on 27.5.2006 but the witnesses did not turn up. In the circumstances, the Court rejected the appellant's application for examination of Forensic

Expert and Handwriting Expert, and fixed the suit for examination of rest of the witnesses on 6.7.2006.

From above narration of the facts, it would be manifest that adequate opportunity was given to the appellant which he failed to avail of.

Our attention was drawn in course of hearing to the order of this Court dated 21.8.2006 in D.B. Civil Special Appeal no.635/2006 between the same parties, and arising out of the same suit, and it was submitted that as observed in that order, the admission of the document as part of the record does not mean acceptance of the case of the party or the contents of the document to be true which would be decided finally at the stage of trial on the basis of the entire evidence on record. It was urged that opportunity may be given to the appellant, as it would not be proper to shut out evidence at the threshold stage, as observed in the said order of this Court.

The facts giving rise to Special Appeal no.635/2006 were that in support of his case, the appellant had filed photocopy of the agreement dated 31.5.1999 under which the flat was to be sold to the plaintiff for Rs.8,00,000/-, out of which Rs.2,90,000/- had been allegedly paid to the appellant by cheque as mentioned above. The Court refused to take agreement on record observing that it was photo-

copy and in the absence of the original, it could not be taken as secondary evidence. The appellant then obtained certified copy of the agreement but the application to take the same on record too was rejected by the order impugned on the ground that the similar application had been rejected earlier, and there was no reason to reconsider the prayer. It was in this factual background that this Court observed that by rejecting the application to take the agreement on record on the ground that similar application was rejected earlier even though the appellant had obtained certified copy of the agreement and filed it in the light of the earlier order, the court below had failed to exercise jurisdiction vested in it by law, and accordingly the impugned order dated 5.4.2006 was set aside. In this context, this Court observed that it would not be proper to shut out evidence at the threshold stage and mere admission of the document as part of the record does not mean acceptance of the case of the party or the contents of the document to be true. The Court interfered in the matter even though the suit was fixed for final arguments considering the hollowness of the ground of rejection and also the fact that the agreement in question formed basis of the appellant's case. The Court was of the view that it would not be in the interest of justice to disallow the agreement at the threshold stage. Viewed in the background in which the appellant moved Special Appeal no.635/2006, it would

appear, the facts giving rise to the present appeal are totally different.

As seen above, the court allowed enough opportunity to the appellant to examine the witnesses and produce evidence which he failed to avail of. We were informed by counsel for the respondent that after this Court passed the order dated 21.8.2006 in Special Appeal no.635/2006, the appellant sought leave to produce a large number of documents on record. According to counsel for the respondent, there is concerted attempt by the appellant to stall disposal of the suit.

In the facts and circumstances, we find no ground to interfere in the matter. The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-